

110TH CONGRESS
1ST SESSION

S. 338

To amend title XVIII of the Social Security Act to ensure and foster continued patient quality of care by establishing facility and patient criteria for long-term care hospitals and related improvements under the Medicare program.

IN THE SENATE OF THE UNITED STATES

JANUARY 18, 2007

Mr. CONRAD (for himself, Mr. HATCH, Mr. WYDEN, Mr. VITTER, Mr. DORGAN, and Mrs. LINCOLN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to ensure and foster continued patient quality of care by establishing facility and patient criteria for long-term care hospitals and related improvements under the Medicare program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare Long-Term
5 Care Hospital Improvement Act of 2007”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Long-term care hospitals (in this Act re-
2 ferred to as “LTCHs”) serve a valuable role in the
3 post-acute care continuum by providing care to
4 medically complex patients needing long hospital
5 stays.

6 (2) The Medicare program should ensure that
7 patients receive post-acute care in the most appro-
8 priate setting. The use of additional certification cri-
9 teria for LTCHs, including facility and patient cri-
10 teria, will promote the appropriate placement of se-
11 verely ill patients into LTCHs. Further, patient ad-
12 mission, continued stay, and discharge screening
13 tools can guide appropriate patient placement.

14 (3) Measuring and reporting on quality of care
15 is an important function of any Medicare provider
16 and a national quality initiative for LTCHs should
17 be similar to short-term general acute care hospitals
18 in the Medicare program.

19 (4) To conform the prospective payment system
20 for LTCHs with certain aspects of the prospective
21 payment system for short-term general acute care
22 hospitals and promote payment stability, the Sec-
23 retary of Health and Human Services (in this Act
24 referred to as the “Secretary”) should—

1 (A) perform an annual market basket up-
 2 date;

3 (B) conduct the long term care diagnosis
 4 related groups (in this Act referred to as
 5 “LTCDRGs”) reweighting and wage level ad-
 6 justments in a budget neutral manner each
 7 year;

8 (C) not perform a proposed one-time budg-
 9 et neutrality adjustment; and

10 (D) not extend the 25-percent limitation
 11 on reimbursement of co-located hospital patient
 12 admissions to freestanding LTCHs.

13 (5) LTCHs co-located with another hospital in
 14 underserved areas, including rural areas and areas
 15 with an urban single or MSA dominant hospital,
 16 should be afforded greater relief from the 50 percent
 17 limitation on reimbursement of co-located hospital
 18 patient admissions.

19 **SEC. 3. NEW DEFINITION OF A LONG-TERM CARE HOSPITAL**
 20 **WITH FACILITY AND PATIENT CRITERIA.**

21 (a) DEFINITION.—Section 1861 of the Social Secu-
 22 rity Act (42 U.S.C. 1395x) is amended by adding at the
 23 end the following new subsection:

1 “Long-Term Care Hospital

2 “(ccc) The term ‘long-term care hospital’ means an
3 institution which—”

4 “(1) is primarily engaged in providing, by or
5 under the supervision of physicians, to medically
6 complex inpatients needing long hospital stays—

7 “(A) diagnostic services and therapeutic
8 services for medical diagnosis, treatment, and
9 care of injured, disabled, or sick persons; or

10 “(B) rehabilitation services for the reha-
11 bilitation of injured, disabled, or sick persons;

12 “(2) has an average inpatient length of stay (as
13 determined by the Secretary) for beneficiaries under
14 this title of greater than 25 days, or as otherwise de-
15 fined in section 1886(d)(1)(B)(iv);

16 “(3) satisfies the requirements of paragraphs
17 (2) through (9) of subsection (e);

18 “(4) meets the following additional facility cri-
19 teria:

20 “(A) the institution has a patient review
21 process, documented in the patient medical
22 record, that screens patients prior to admission,
23 validates within 48 hours of admission that pa-
24 tients meet admission criteria, regularly evalu-
25 ates patients throughout their stay, and as-

1 assesses the available discharge options when pa-
2 tients no longer meet the continued stay cri-
3 teria;

4 “(B) the institution applies a standard pa-
5 tient screening tool, as determined by the Sec-
6 retary, that is a valid clinical tool appropriate
7 for this level of care, uniformly used by all long-
8 term care hospitals, to measure the severity of
9 illness and intensity of service requirements for
10 patients for the purposes of making admission,
11 continuing stay, and discharge medical neces-
12 sity determinations taking into account the
13 medical judgment of the patient’s physician, as
14 provided for under sections 1814(a)(3) and
15 1835(a)(2)(B);

16 “(C) the institution has active physician
17 involvement with patients during their treat-
18 ment through an organized medical staff, physi-
19 cian review of patient progress on a daily basis,
20 and consulting physicians on call and capable of
21 being at the patient’s side within a moderate
22 period of time, as determined by the Secretary;

23 “(D) the institution has interdisciplinary
24 team treatment for patients, requiring inter-
25 disciplinary teams of health care professionals,

1 including physicians, to prepare and carry out
 2 an individualized treatment plan for each pa-
 3 tient; and

4 “(E) the institution maintains adequate
 5 staffing levels of licensed health care profes-
 6 sionals, as determined by the Secretary, to en-
 7 sure that long-term care hospitals provide the
 8 intensive level of care that is sufficient to meet
 9 the needs of medically complex patients needing
 10 long hospital stays; and

11 “(5) meets patient criteria relating to patient
 12 mix and severity appropriate to the medically com-
 13 plex cases that long-term care hospitals are uniquely
 14 designed to treat, as measured under section
 15 1886(m).”.

16 (b) NEW PATIENT CRITERIA FOR LONG-TERM CARE
 17 HOSPITAL PROSPECTIVE PAYMENT.—Section 1886 of
 18 such Act (42 U.S.C. 1395ww) is amended by adding at
 19 the end the following new subsection:

20 “(m) PATIENT CRITERIA FOR PROSPECTIVE PAY-
 21 MENT TO LONG-TERM CARE HOSPITALS.—

22 “(1) IN GENERAL.—To be eligible for prospec-
 23 tive payment as a long-term care hospital, a major-
 24 ity of the total number of patients entitled to bene-
 25 fits under part A who are discharged from a long-

1 term care hospital must be medically complex pa-
 2 tients admitted with a high severity of illness, as
 3 that term is defined by the Secretary for payment
 4 purposes, with 1 or more enumerated medical condi-
 5 tions specified in paragraph (2).

6 “(2) MEDICALLY COMPLEX MEDICAL CONDI-
 7 TIONS.—The Secretary shall determine a list of
 8 medical conditions associated with a high severity of
 9 illness of patients who are appropriate for treatment
 10 in long-term care hospitals, as indicated by the pres-
 11 ence of clinical comorbidities in accordance with a
 12 methodology specified by the Secretary. Such list
 13 shall include the following medical conditions:

14 “(A) Circulatory conditions.

15 “(B) Digestive, endocrine, and metabolic
 16 conditions.

17 “(C) Infectious disease.

18 “(D) Neurological conditions.

19 “(E) Renal conditions.

20 “(F) Respiratory conditions.

21 “(G) Skin conditions.

22 “(H) Other medically complex conditions
 23 as defined by the Secretary.”.

24 (c) NEGOTIATED RULEMAKING TO DEVELOP LTCH
 25 FACILITY AND PATIENT CRITERIA.—The Secretary shall

1 promulgate regulations to carry out the amendments made
 2 by this section on an expedited basis and using a nego-
 3 tiated rulemaking process under subchapter III of chapter
 4 5 of title 5, United States Code.

5 (d) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to discharges occurring on or after
 7 October 1, 2007.

8 **SEC. 4. LTCH QUALITY IMPROVEMENT INITIATIVE.**

9 (a) STUDY TO ESTABLISH QUALITY MEASURES.—
 10 The Secretary shall conduct a study (in this section re-
 11 ferred to as the “study”) to determine appropriate quality
 12 measures for Medicare beneficiaries receiving care in
 13 LTCHs.

14 (b) REPORT.—Not later than October 1, 2007, the
 15 Secretary shall submit to Congress a report on the results
 16 of the study.

17 (c) SELECTION OF QUALITY MEASURES.—Subject to
 18 subsection (e), the Secretary shall choose 3 quality meas-
 19 ures from the study to be reported by LTCHs.

20 (d) REQUIREMENT FOR SUBMISSION OF DATA.—

21 (1) IN GENERAL.—LTCHs shall—

22 (A) collect data on the 3 quality measures
 23 chosen under subsection (c); and

24 (B) submit all required quality data to the
 25 Secretary.

1 (2) FAILURE TO SUBMIT DATA.—Any LTCH
 2 which does not submit the required quality data to
 3 the Secretary in any fiscal year shall have the appli-
 4 cable LTCH market basket under section 1886 re-
 5 duced by not more than 0.4 percent for such year.

6 (e) EXPANSION OF QUALITY MEASURES.—The Sec-
 7 retary may expand the number of quality indicators re-
 8 quired to be reported by LTCHs under the study. If the
 9 Secretary adds other measures, the measures shall reflect
 10 consensus among the affected parties. The Secretary may
 11 replace any measures in appropriate cases, such as where
 12 all hospitals are effectively in compliance or where meas-
 13 ures have been shown not to represent the best clinical
 14 practice.

15 (f) AVAILABILITY OF DATA TO PUBLIC.—The Sec-
 16 retary shall establish procedures for making the quality
 17 data submitted under this section available to the public.

18 **SEC. 5. CONFORMING LTCH PPS UPDATES TO THE INPA-**
 19 **TIENT PPS.**

20 (a) REQUIRING ANNUAL UPDATES OF BASE RATES
 21 AND WAGE INDICES AND ANNUAL UPDATES AND
 22 REWEIGHTING OF LTCDRGs.—

23 (1) IN GENERAL.—The second sentence of sec-
 24 tion 307(b)(1) of the Medicare, Medicaid, and
 25 SCHIP Benefits Improvement and Protection Act of

2000 (114 Stat. 2763A–496), as enacted into law by section 1(a)(6) of Public Law 106–554, is amended by inserting before the period at the end the following: “, and shall provide (consistent with updating and reweighting provided for subsection (d) hospitals under paragraphs (2)(B)(ii), (3)(D)(iii), and (3)(E) of section 1886 of the Social Security Act) for an annual update under such system in payment rates, in the wage indices (in a budget neutral manner), and in the classification and reweighting (in a budget neutral manner) of the diagnosis-related groups applied under such system”.

(2) APPLICATION.—Pursuant to the amendment made by paragraph (1), the Secretary shall provide annual updates to the LTCH base rate, as is specified for the inpatient hospital prospective payment system under section 1886(d)(2)(B)(ii) of the Social Security Act (42 U.S.C. 1395ww(d)(2)(B)(ii)). The Secretary shall annually update and reweight the LTCDRGs under section 307(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 or an alternative patient classification system in a budget neutral manner, consistent with such updating and reweighting applied under section 1886(d)(3)(D)(iii)

1 of the Social Security Act (42 U.S.C.
2 1395ww(d)(3)(D)(iii)). The Secretary shall annually
3 update wage levels for LTCHs in a budget neutral
4 manner, consistent with such annual updating ap-
5 plied under section 1886(d)(3)(E) of the Social Se-
6 curity Act (42 U.S.C. 1395ww(d)(3)(E)).

7 (b) ELIMINATION OF ONE-TIME BUDGET NEU-
8 TRALITY ADJUSTMENT.—The Secretary shall not make a
9 one-time prospective adjustment to the LTCH prospective
10 payment system rates under section 412.523(d)(3) of title
11 42, Code of Federal Regulations, or otherwise conduct any
12 budget neutrality adjustment to address such rates, dur-
13 ing the transition period specified in section 412.533 of
14 such title from cost-based payment to the prospective pay-
15 ment system for LTCHs.

16 (c) NO APPLICATION OF 25 PERCENT PATIENT
17 THRESHOLD PAYMENT ADJUSTMENT TO FREESTANDING
18 LTCHS.—The Secretary shall not extend the 25 percent
19 (or applicable percentage) patient threshold payment ad-
20 justment under section 412.534 of title 42, Code of Fed-
21 eral Regulations, or any similar provision, to freestanding
22 LTCHs.

1 **SEC. 6. RELIEF FOR CERTAIN LONG-TERM CARE HOS-**
2 **PITALS AND SATELLITE FACILITIES THAT**
3 **ARE CO-LOCATED WITH OTHER HOSPITALS.**

4 (a) URBAN SINGLE AND MSA DOMINANT HOS-
5 PITALS.—The Secretary shall permit up to 75 percent of
6 the discharged Medicare inpatient population of an appli-
7 cable hospital to be admitted from a co-located urban sin-
8 gle or co-located MSA dominant hospital (as defined in
9 section 412.534(e)(4) of title 42, Code of Federal Regula-
10 tions) without adjustment to the hospital’s LTCH pro-
11 spective payment system payment in the manner described
12 in section 412.534(e) of such title.

13 (b) RURAL HOSPITALS.—The Secretary shall permit
14 up to 75 percent of the discharged Medicare inpatient
15 population of an applicable hospital which is located in a
16 rural area (as defined in section 412.64(b)(1)(ii)(C) of
17 title 42, Code of Federal Regulations) to be admitted from
18 a co-located hospital without adjustment to the hospital’s
19 LTCH prospective payment system payment in the man-
20 ner described in section 412.534(d) of such title.

21 (c) APPLICABLE LONG-TERM CARE HOSPITAL DE-
22 FINED.—In this section, the term “applicable long-term
23 care hospital” means—

24 (1) a long-term care hospital that meets the cri-
25 teria in section 412.22(e) of title 42, Code of Fed-
26 eral Regulations; and

- 1 (2) a satellite facility of a long-term care hos-
- 2 pital that meet the criteria in section 412.22(h) of
- 3 such title.

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